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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

THE SCO GROUP, INC.,

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant/Counterclaim-Plaintiff.

**IBM'S MOTION FOR SUMMARY
JUDGMENT ON ITS CLAIM FOR
COPYRIGHT INFRINGEMENT (IBM'S
EIGHTH COUNTERCLAIM)**

(ORAL ARGUMENT REQUESTED)

Civil No. 2:03CV-0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

Pursuant to DUCivR 56-1(a) and Federal Rules of Civil Procedure 1, 26, 30, 33, 37 and 56, Defendant/Counterclaim-Plaintiff International Business Machines Corporation (“IBM”) respectfully submits this motion for summary judgment its claim for copyright infringement (IBM’s Eighth Counterclaim).

Despite its public claims, The SCO Group, Inc. (“SCO”) has failed to identify any code allegedly owned by SCO and copied by IBM into Linux. By contrast, undisputed facts establish that SCO has literally copied, without alteration, hundreds of thousands of lines of code developed and copyrighted by IBM. And SCO has done so for profit, without any license to do so. While the measure of damages is not amenable to summary determination, the Court can and should enter judgment that SCO is liable for copyright infringement on IBM’s Eighth Counterclaim, and should enjoin SCO from any further infringement of IBM’s copyrights.

For the all foregoing reasons, and as more fully set forth in the accompanying memorandum, this Court should enter summary judgment in favor of IBM on its claim for copyright infringement (IBM’s Eighth Counterclaim).

DATED this 25th day of September, 2006.

SNELL & WILMER L.L.P.

/s/ Amy F. Sorenson

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of September, 2006, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court and delivered by CM/ECF system to the following:

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